

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 15, 2002

**D037300        Kvass Construction Co. Inc. v. Valley Insurance Services, Inc., et al.**

The judgment is reversed. Valley Center's appeal of the order denying sanctions under section 128.5 is dismissed as moot. Kvass is awarded costs on appeal. McConnell, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D038632        Magee et al. v. Morgan Stanley Dean Witter & Co.**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

**D039887        Jonathan C. v. Superior Court of San Diego County/People**

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 16, 2002

**D039740 Deborah H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Deborah H. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D037887 Morris v. San Marcos Check Cashing Location et al.**

The judgment is affirmed. Costs on appeal are awarded to respondents. McConnell, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D039793 Giliam et al. v. Superior Court of San Diego County/Wetlzer**

The petition is denied.

**D038452 People v. Hendrix**

The petition for rehearing is denied.

**D039869 Rabbani v. Superior Court of San Diego County/Miftarevic et al.**

The petition is denied.

**D036061 People v. Sirat**

Judgment affirmed. Haller, Acting P.J.; O'Rourke, J., McConnell, J.

**D038464 Schaefer et al. v. Ludecke**

The unopposed motion to dismiss the appeal is granted. The motion to strike the opening brief is dismissed as moot.

**D038252 People v. Bunch**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D037909 In re Joseph S., a Juvenile**

Judgment affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

**D036646 People v. Genzler**

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., Huffman, J.

**D038826 People v. Marquez**

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D039859 In re Lacy K., a Juvenile**

Appellant seeks to appeal the termination of her parental rights by J. Riggs. This occurred August 10, 2001. In that the notice of appeal must be filed within 60 days, the appeal is dismissed as untimely filed.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 16, 2002 (continued)

**D037859        People v. Shaw**

The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Huffman, J;  
We Concur: Benke, Acting P.J., Nares, J.

**D037643        Coleman v. Hayes et al.**

Plaintiff/appellant/bankruptcy debtor Monica Coleman having failed to, within 15 days of our March 26, 2002 order, (1) secure in the bankruptcy court an abandonment by the bankruptcy trustee of this appeal and (2) forward to this court documentation of the abandonment, the appeal is dismissed.

**D039756        Wendy G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Wendy G. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D039662        Eric J. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Isabel J. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D039792        Lasher v. Superior Court of San Diego County/Lasher**

The petition is denied.

**D039612        In re Gunter on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 17, 2002

**D035964 Franklin et al. v. Fasack et al.**

Judgment affirmed. Respondents to recover their costs of appeal. Benke, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D037094 Bomil, Inc. v. Hoffelder et al.**

The order amending the judgment making Glen Roberts a judgment debtor in this case is reversed. Costs on appeal are awarded to appellant. Benke, Acting P.J.; We Concur: Huffman, J., O'Rourke, J.

**D038134 People v. Preston**

Judgment affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

Court convened at 10:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre  
Clerk: D. E. Moore

**D039640 Westerfield v. Superior Court/Copley Press, Inc./RPI**

Matter called on merits. Guylyn R. Cummins, Esq. argued for real party in interest. Laura G. Schaefer, Esq. argued for petitioner. Richard Armstrong, Deputy District Attorney argued for The People. Matter submitted.

Court adjourned at 10:45 a.m.

**D039055 In re S. D., a Juvenile**

The judgment is affirmed. McConnell, J.; We Concur: Kremer, P.J., McIntyre, J.

**D037145 People v. Bedford**

Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

**D033965 Creative Capital Leasing Group, LLC v. Adam et al.**

The judgment is reversed insofar as it awards \$20,000 for the residual value for the ATM's. The trial court is to determine a reasonable residual value for the machines in light of the evidence. The trial court is to order a new trial on residual value conditioned on Creative's refusal to accept residual value damages in the amount determined by the trial court. In all other respects the judgment is affirmed. The parties are to bear their own costs on appeal. Benke, J.; We Concur: Kremer, P.J., McConnell, J.

**D039613 In re Quarles on Habeas Corpus**

The petition is denied.

**D039643 Quarles v. Superior Court of San Diego County/People**

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 17, 2002 (Continued)

**D039733      Luis C. v. Superior Court of San Diego County/People**

The petition is denied.

**D037492      Marsch v. Stern**

The order requiring Marsch contribute \$13,568,121 to Horizon is affirmed. Benke, J.;

We Concur: Kremer, P.J., Nares, J.

**D038682      Grant v. Fernandez**

The judgment entered on May 31, 2000, is reversed and the matter is remanded with directions that the court modify its judgment by striking the award of damages and attorney fees and awarding Grant only \$281 in costs. The order issued on November 17, 1998, granting declaratory relief was not appealed by appellant and is therefore affirmed. The appellant is entitled to his costs on appeal. McDonald, J.;

We Concur: Haller, Acting P.J., McConnell, J.

**D035591      People v. Massicot**

The judgment (order granting probation) is reversed as to Massicot's convictions under Penal Code section 314. In all other respects, the judgment is affirmed. CERTIFIED FOR PUBLICATION

O'Rourke, J.; We Concur: Kremer, P.J., McDonald, J.

**D037558      Tyler L. v. Poway Unified School District**

The petition for rehearing is denied.

**D037639      In re Dorgis, a Juvenile**

The juvenile court orders are affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Nares, J.

**D039871      Agresta v. Countrywide Home Loan, Inc.**

The appeal is dismissed. An order denying a motion for summary judgment is not an appealable order but rather is reviewable by a timely petition for peremptory writ.

**D039368      In re Hurd on Habeas Corpus**

The petition is denied.

**D039903      People v. Madsen**

The appeal from the order denying the motion for new trial is dismissed because the order is not appealable. Dismissal is without prejudice to timely filing a proper notice of appeal from the reinstatement on March 21, 2002 of the previous judgment and sentence.

**D037347      Tomlinson v. Qualcomm, Inc.**

The judgment is affirmed. Respondent is entitled to costs on appeal. CERTIFIED FOR PUBLICATION  
McDonald, Acting P.J.; We Concur: O'Rourke, J., McConnell, J.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 17, 2002 (Continued)

**D039216        People v. Shawcroft**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 37(b).  
The appeal is dismissed.

**D038422        People v. Esquibel**

The judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D036931        People v. Johnson**

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D039829        Murphy v. Superior Court of San Diego County/Mammoth Mountain  
Ski Area et al.**

The petition is denied.

**D039892        In re Mora on Habeas Corpus**

The petition is denied.

**D039891        In re Mora on Habeas Corpus**

The petition is denied.

**D039147        People v. Abelar**

The appeal is dismissed.

**D039745        In re James on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 18, 2002

**D039661        McKee v. Metabolife International, Inc.**

The motion to dismiss is granted because the order granting the motion to compel arbitration is not appealable.

**D037629        Rainshine Resources, Inc. v. International City Bank**

The judgment of dismissal is affirmed. Costs are awarded to Respondent. Huffman, J.;  
We Concur: Benke, Acting P.J., Nares, J.

**D039644        Day v. Metabolife International, Inc.**

The appeal is dismissed as the order is not appealable. Dismissal is without prejudice to filing a petition for writ of mandate should appellant elect to do so.

**D038090        Martin v. Wiles**

The order awarding Martin attorney fees incurred in connection with the prior appeal is reversed and the matter is remanded for further proceedings in accordance with this opinion. Each party is to bear its own costs on this appeal. McIntyre, J.; We Concur: Huffman, Acting P.J., McConnell, J.

**D036694        People v. Gallegos et al.**

The judgments are affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D037612        Croshier v. Pacific Bell Telephone Company**

The judgment is reversed except insofar as the court granted summary adjudication as to Croshier's claim for retaliation and her request for punitive damages. The matter is remanded for further proceedings. McIntyre, Acting P.J.; We Concur: O'Rourke, J., McConnell, J.

**D039797        Doe v. Superior Court of San Diego County**

The motion for access to court records has been read and considered by Justices Huffman, Haller and McDonald. To the extent the motion may be interpreted as a request to modify the opinion in this case, the decision became final as to this court on April 10, 2002, and is no longer subject to modification. (Cal. Rules of Court, rule 24(a).) To the extent the motion may be construed as a request to unseal the files of this court, the motion is denied.

**D039608        In re Osuna on Habeas Corpus**

The petition is denied.

**D036286        People v. Thomas**

The petition for rehearing is denied.

**D035658        People v. Erez**

The order is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Huffman, J.

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 18, 2002 (Continued)

**D039560        Roberta H. v. Superior Court of Imperial County/Imperial County Department of Social Services**

The petition is denied. The February 19, 2002, stay is vacated. McDonald, J.;  
We Concur: Haller, Acting P.J., McIntyre, J.

**D039501        Cairo v. Regents of the University of California et al.**

On the court's own motion, the court's order of March 26, 2002, is vacated and the appeal filed on January 18, 2002, is reinstated.



COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

April 19, 2002

**D038992        In re Y.P., a Juvenile**

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.